



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,492	06/13/2005	Bart Wessel Veltkamp	006553.00003	8548
22907 7590 09/15/2008 BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051				
EXAMINER				
CIRIC, LJILJANA V				
ART UNIT		PAPER NUMBER		
3744				
MAIL DATE		DELIVERY MODE		
09/15/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/507,492

Applicant(s)

VELTKAMP ET AL.

Examiner

Ljiljana (Lil) V. Ciric

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-14 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1 and 3-14 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 9/13/2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 09/13/2004
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

2. The information disclosure statement filed on September 13, 2004 fails to comply with 37 CFR 1.98(a)(2), which requires *a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed*; and all other information or that portion which caused it to be listed. Therefore, the information referred to therein relating to the listed foreign patent documents and the listed other or non-patent literature publications for which no copies have been provided by applicant has been lined through and has NOT been considered by the examiner.

Drawings

3. The drawings filed on September 13, 2004 are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following features must be shown OR the features canceled from the claims, for example: control means for repeatedly changing the connections as recited base claim 1 and in the claims depending therefrom; and, supply means for supplying water to the first group of ducts as recited in amended claim 4 and in new claim 14. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief

Art Unit: 3744

description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The abstract of the disclosure is objected to because it does not avoid phrases which can be implied (i.e., "The invention relates to") and because it does not avoid legal terminology normally reserved for claims (i.e., "means"). Correction is required. See MPEP § 608.01(b).

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

6. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: there appears to be no antecedent basis in the specification for the term "control means for repeatedly changing the connections" (or its equivalent) as recited in claim 1 and in claims 6 through 8; and, there also appears to be no antecedent basis in the specification for the term "supply means for supplying water to the first group of ducts" (or its equivalent) as recited in each of claims 4 and 14.

Art Unit: 3744

7. The disclosure is objected to because of the following informalities: the legal term “means” appears throughout the specification, yet the specification fails to disclose which particular equivalent structures or elements are encompassed by any of the phrases including the term “means”.

Appropriate correction is required.

Claim Objections

8. Claims 1 and 3 through 14 are objected to because of the following informalities: “Recuperator” [claim 1, line 1] should be replaced with “A recuperator”; “located at at” [claim 1, line 17, should be replaced with “located at”; “Recuperator” [line 1 of each of dependent claims 3 through 14] should be replaced with “The recuperator”; and, “from ventilating air of a building” [claim 9, line 3] should be replaced with “from ventilation air in a building” or similar, as appropriate, for improved grammatical correction. Appropriate correction is required.

9. Claims 6 through 8 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 6 (from which claims 7 and 8 each depend), appears to merely recite the limitations “control means for repeatedly changing the connections” in lines 2 and 3 of the claim, thereby repeating the limitations “control means for repeatedly changing the connections” as recited in line 18 and 19 of claim 1 from which claim 6 depends and thus failing to further limit claim 1.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

11. Claims 1 and 3 through 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in

Art Unit: 3744

the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. In particular, the originally filed disclosure fails to clearly correlate particular structural elements with either the control means for repeatedly changing the connections as recited in claim 1 and claims 3 through 14 depending therefrom or with the supply means for supplying water to the first group of ducts as recited in claims 4 and 14.

Neither the originally filed drawings nor the originally filed specification show nor in any way describe which structural elements correspond to these means-plus-function limitations as recited in the claims, and one skilled in the art would not necessarily know what is intended to be encompassed thereby either. Therefore, it is not clear that the inventors had possession of the aforementioned claimed subject matter at the time of filing of the instant application, and the written description requirement is not met for the claimed invention.

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 1 and 3 through 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative, written in run-on fashion, and indefinite, thus failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and contain grammatical and idiomatic errors.

For example, it is not clear what is meant by the phrase “for temporarily and repeatedly alternating connect.” [sic, claim 1, lines 11-12, which appear to either have a word or words missing therefrom or to contain one or more typographical/idiomatic informalities, thus rendering the same generally incomprehensible and the claims indefinite with regard to the scope of protection sought.

Also for example, it is not clear to which ones of the previously recited connections the limitation “the connections” [claim 1, line 19; claim 6, line 3; claim 7, line 2; claim 8, line 2] refers, thus further rendering the claims indefinite with regard to the scope of protection sought thereby.

It is not clear at all which particular structural elements and/or equivalents thereof are encompassed by the means-plus-function limitation “control means for repeatedly changing the connections” as recited in lines 18-19 of base claim 1 as well as in claims 6 through 8, for example, thus even further rendering indefinite the metes and bounds of protection sought by the claims. There is no corresponding description of the same in the originally filed specification and the originally filed drawings fail to show these in any way either.

Similarly, it is also not clear at all which particular structural elements and/or equivalents thereof are encompassed by the means-plus-function limitation “supply means for supplying water to the first group of ducts” as recited in claims 4 and 14. Furthermore, it is not even remotely clear why water would even be supplied to the gas-conveying ducts. Again, there is no corresponding description of the same in the originally filed specification and the originally filed drawings fail to show any such supply means either.

With regard to claim 6 (and claims 7 and 8 depending therefrom), it appears that the control means for repeatedly changing the connections as recited in lines 2-3 of claim 6 are merely an inappropriate duplicate recitation of the control means previously recited in lines 18-19 of claim 1 from which claim 6 depends.

With regard to claim 8 as written, it is not clear what exactly is encompassed by the limitation “a predetermined measurement value” as recited in lines 2-3 of the claim.

With regard to claim 9 as written, it is not clear what is meant by the limitations “characterized in that the recuperator is formed by a recuperator for recovering thermal energy from ventilating air of a building” [sic].

Claim 12, drawn to the inventive recuperator, recites the limitation that “the recuperator and heat exchanger are placed on or adjacently of each other” which is unclear as written. Furthermore, there is no proper antecedent basis for the heat exchanger as recited in the claim and it is not clear whether the heat exchanger is part of the inventive recuperator (in which case the heat exchanger would be improperly recited once as part of the recuperator and then again as a separate heat exchanger) or whether the heat exchanger is not part of the inventive recuperator (in which case the claim is drawn to more than the combination of the inventive recuperator and a separate heat exchanger and in which case at least the preamble of the claim should be appropriately corrected).

Furthermore, with regard to claim 12 as written, it is not clear to which previously recited valves the limitation “the valves” as recited in line 3 of the claim refers. Does this limitation refer to the valves previously recited in line 4 of claim 11 from which claim 12 depends, or to the valves recited in line 17 of claim 1 from which claim 12 also depends, or to all of the above?

There is insufficient antecedent basis for the limitations “the first group of ducts of the auxiliary heat exchanger” [claim 13, line 3] and also for the limitation “the auxiliary heat exchanger” [claim 13, line 3; claim 13, line 5].

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. As best can be understood in view of the indefiniteness of the claims, claims 1, 3, and 5 through 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Thunberg.

Thunberg discloses a recuperator including, for example: a(n auxiliary) heat exchanger 10 having two groups of parallel ducts 25, 26, 27, and 28 with corresponding connections; a first supply means for

Art Unit: 3744

supplying a cold gas flow to the first connection opening 17; a second supply means for supplying a warm gas flow to the third connection opening 18 or 38; a first discharge means for discharging the cold gas flow from a second connection opening 20 or 39; a second discharge means for discharging the warm gas flow from a fourth connection opening 19 or 37; two alternating valves 40 and 41; a bypass duct 33 or 34 with a controllable valve 42 or 43 arranged in each of the bypass ducts 33 or 34. A control means for repeatedly changing the various connections is implied—see column 4, lines 63-68 and also column 5, lines 1-6, for example.

The reference thus reads on the claims.

16. The non-application of prior art against claims 4 and 14 should not be construed as an indication of allowability, but rather as an indication of the degree of indefiniteness of the claims.

Conclusion

17. The additional prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric whose telephone number is 571-272-4909. The examiner works a flexible work schedule but can normally be reached on most days during the work week between the hours of 10:30 a.m. and 6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl J. Tyler can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3744

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ljiljana (Lil) V. Ciric/

Primary Examiner, Art Unit 3744